

**Government of the District of Columbia**

**ZONING COMMISSION**



ZONING COMMISSION ORDER NO. 397

Case No. 83-3

April 11, 1983

Whereas, on August 24, 1982, the Congress of the United States enacted the Foreign Missions Act (Title II, Public Law 97-241, 96 Stat. 286) which regulates the location, replacement or expansion of chanceries and international organizations in the District of Columbia; and

Whereas, the Foreign Missions Act became effective on October 1, 1982; and

Whereas, the Foreign Missions Act required that chancery applications be processed as rulemaking cases and provided that the Zoning Regulations of the District of Columbia would be effective only to the extent that they were consistent with the Act; and

Whereas, before October 1, 1982, the District of Columbia Board of Zoning Adjustment (BZA), pursuant to the Zoning Regulations in effect at that time, considered the location, replacement or expansion of chanceries in certain zone districts as contested cases; and

Whereas, the BZA had no rules of procedures to govern rulemaking type cases under which to process chancery applications; and

Whereas, portions of the Zoning Regulations were not consistent with the Act relative to the regulation of chanceries and international organizations; and

Whereas, since the Foreign Missions Act became effective, District and Federal Government agency staffs cooperated in numerous meetings and discussions over several months to attempt to resolve differences in the impact and interpretation of the Act; and

Whereas, on February 2, 1983, the BZA met and adopted amendments to the Supplemental Rules of Practice and Procedure to govern chancery applications and forwarded the proposed rules to the Zoning Commission for consideration; and

Whereas, on February 14, 1983, the Zoning Commission met and authorized the scheduling of a public hearing at the earliest possible date to consider the proposed amendments to the Zoning Regulations and the BZA Rules; and

Whereas, on April 11, 1983, pursuant to notice, the Zoning Commission conducted a public hearing to consider the proposed amendments; and

Whereas, upon the conclusion of the public hearing, the Zoning Commission considered motions for emergency action to implement the Foreign Missions Act from the U.S. Department of State on behalf of the Government of Japan and from the Kingdom of Saudi Arabia; and

Whereas, more than six months had passed since the Foreign Missions Act became effective and the BZA was unable to accept and process applications for chancery approvals; and

Whereas, at least three foreign governments were adversely affected because the BZA had no rules under which to accept and consider their applications; and

Whereas, the Zoning Commission must not only consider the interests of citizens of the District of Columbia but also the interests of the United States and nations around the world; and

Whereas, the general welfare of the District of Columbia is best served when a cooperative balance of interests is struck between the District and Federal Governments; and

Whereas, Section 1 of the Zoning Act (Act of June 20, 1938, 52 Stat. 797, also cited as Section 5-413 of the D.C. Code) establishes the authority of the Zoning Commission "to promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia; and

Whereas, Section 1-1506 of the District of Columbia Code authorizes the Zoning Commission to take emergency action for a period not to exceed 120 days "for the immediate preservation of public peace, health, safety, welfare or morals,"

Now, Therefore, the Zoning Commission resolves that an emergency exists, and that it is necessary to take immediate action to provide for the implementation of the Foreign Missions Act and the general welfare of the District of Columbia. It is therefore ordered that the Zoning Regulations and the BZA Rules of Practice and Procedure are amended as follows:

1. Delete the following existing references to chanceries and international agencies:
  - A. Definitions of "chancery" and "international agency" in Section 1202.
  - B. Paragraph 3101.313, which permits existing chanceries in R-1 and less restrictive Districts to remain and/or, with BZA approval, expand.
  - C. Paragraph 3105.46, which permits chanceries with BZA approval in R-5-C and R-5-D Districts.
  - D. From Paragraph 4101.44, the word "chancery," which permits chanceries with BZA approval in SP Districts.
  - E. Paragraph 4402.220, which permits chanceries and international agencies as a matter-of-right in W Districts.
  - F. Paragraph 4502.221, which permits chanceries and international agencies as a matter-of-right in CR Districts.
  - G. Article 46, the Mixed Use Diplomatic (D) District.
  - H. Paragraph 5101.39, which permits existing chanceries in C-1 and C-2-A Districts to remain and/or, with BZA approval, expand.
  - I. Paragraph 5102.37, which permits chanceries and international agencies as a matter-of-right in C-2-B, C-2-C, C-3, C-4 and C-5 (PAD) Districts.
  - J. From Paragraph 6101.31 the words "and chanceries," which prohibits new chanceries in C-M and M Districts.
  - K. Paragraph 6101.34, which permits existing chanceries and international agencies to remain.
2. Add the following new definitions to Section 1202:

Chancery: The principal offices of a foreign mission used for diplomatic or related purposes, and annexes to such offices (including ancillary offices and support facilities), and includes the site and any building on such site which is used for such purposes.

International organization: A public international organization designated as such pursuant to the International Organizations Immunities Act (22 U.S.C. 288--288f-2) or a public international organization created pursuant to a treaty or other international agreement as an instrument through or by which two or more foreign governments engage

in some aspect of their conduct of international affairs, and an official mission (other than a United States mission) to such a public international organization, including any real property of such an organization or mission and including the personnel of such an organization or mission.

3. Permit an existing chancery in R-1 and less restrictive Districts to continue by adding a new Paragraph 3101.313 as follows:

3101.313 Chancery existing on September 22, 1978, provided that the expansion or reconstruction of any such chancery shall be subject to disapproval by the Board of Zoning Adjustment in accordance with Section 4603.

4. Permit a chancery in R-5-C and R-5-D Districts subject to disapproval by the BZA by adding a new Sub-section 3105.6 as follows:

3105.6 A chancery is a permitted use in R-5-C or R-5-D Districts subject to disapproval by the Board of Zoning Adjustment in accordance with the requirements of Article 46.

5. Permit a chancery in SP Districts subject to disapproval by the BZA by adding a new Sub-section 4108.8 as follows:

4108.8 A chancery is a permitted use subject to disapproval by the Board of Zoning Adjustment in accordance with the requirements of Article 46.

6. Permit an embassy, chancery or international organization as a matter-of-right in W Districts by adding a new Paragraph 4402.220 as follows:

4402.220 Embassy, chancery or international organization.

7. Permit an embassy, chancery or international organization as a matter-of-right in CR Districts by adding a new Paragraph 4502.221 as follows:

4502.221 Embassy, chancery or international organization.

8. Add a new Article 46, as follows:

#### Article 46

##### Mixed Use Diplomatic (D) District

##### Section 4601 Preamble

- 4601.1 The Mixed Use Diplomatic D District is established to implement the Foreign Missions Act (Title 2, Public Law 97-241, 96 Stat. 283, August 24, 1982). The District is mapped at

suitable locations in implementation of the Foreign Missions Act and the Foreign Missions and International Agencies element of the Comprehensive Plan for the National Capital.

4601.2 The D District is an overlay district and is mapped in combination with another district and not in lieu of such underlying district. All uses, buildings and structures permitted in accordance with this Article and the appropriate regulations of the underlying district with which the mapped D District is combined shall be permitted in such combined Districts. All restrictions and prohibitions provided with respect to either of the Districts so combined shall also apply except as specifically modified by this Article.

4601.3 The criteria and procedures set forth in this Article shall also apply to chancery uses in R-5-C, R-5-D and SP Districts, and the expansion or reconstruction of chanceries existing on September 22, 1978 in R-1, R-2, R-3, R-4, R-5-A or R-5-B Districts.

#### Section 4602 - Use Regulations

4206.1 A chancery is a permitted use in a D District subject to disapproval by the Board of Zoning Adjustment, based on the following criteria:

4602.11 The international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation's Capital.

4602.12 Historic preservation, as determined by the Board of Zoning Adjustment in carrying out this Section; and in order to ensure compatibility with historic landmarks and historic districts, substantial compliance with District of Columbia and Federal regulations governing historic preservation shall be required with respect to new construction and to demolition of or alteration to historic landmarks.

4602.13 The adequacy of off-street or other parking and the extent to which the area will be served by public transportation to reduce parking requirements, subject to such special security requirements as may be determined by the Secretary of State, after consultation with Federal agencies authorized to perform protective services.

4602.14 The extent to which the area is capable of being adequately protected, as determined by the Secretary of State, after consultation with Federal agencies authorized to perform protective services.

4602.15 The municipal interest, as determined by the Mayor.

4602.16 The Federal interest, as determined by the Secretary of State.

Section 4603 - Board of Zoning Adjustment Process

- 4603.1 In order to locate, replace or expand a chancery in R-5-C, R-5-D, SP or D Districts, or to expand or reconstruct a chancery existing on September 22, 1978 in R-1, R-2, R-3, R-4, R-5-A or R-5-B Districts, application shall be made to the Board of Zoning Adjustment. Any such application shall be reviewed by the Board in accordance with this section and the applicable requirements of the Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment.
- 4603.2 Any such application shall be considered a rule-making proceeding.
- 4603.3 Any determination by the Board shall be based solely on the criteria set forth in Sub-Section 4602.1.
- 4603.4 The Board shall refer any such application to the Mayor for review and comment. The Board shall specifically request a determination by the Mayor as to the municipal interest, as set forth in Paragraph 4602.15.
- 4603.5 The Board shall refer any such application to the Secretary of State for review and comment. The Board shall specifically request a determination by the Secretary of State as to the Federal interest, as set forth in Paragraph 4602.16, special security requirements, as set forth in Paragraph 4602.13, and the extent to which the area is capable of being adequately protected, as set forth in Paragraph 4602.14.
- 4603.6 When the chancery is located in a historic district or historic landmark and the use requires review and processing of new construction, demolition or alteration pursuant to the Historic District and Historic Landmark Protection Act of 1978 (D.C. Law 2-144, D.C. Code Sec. 5-1001, et seq., 1981 ed.), the application shall be referred to the Historic Preservation Review Board, or the Commission of Fine Arts if required by D.C. Law 2-144, for report and recommendation to the Board of Zoning Adjustment. The final determination as to substantial compliance with D.C. Law 2-144 and Federal regulations governing historic preservation shall be made by the Board of Zoning Adjustment.
- 4603.7 To facilitate this review, the applicant shall submit plans sufficiently detailed for the review of any proposed new construction, demolition or alteration.
- 4603.8 A final determination concerning the location, replacement, or expansion of a chancery shall be made not later than six months after the date of the filing of an application with respect to such location, replacement, or expansion.

9. Permit a chancery as a matter-of-right in C-1 and less restrictive districts by adding a new Paragraph 5101.39 as follows:

5101.39 Chancery.

10. Permit an international organization as a matter of right in C-2-B, C-2-C, C-3, C-4 and C-5 (PAD) Districts by adding a new Paragraph 5102.37, as follows:

5102.37 International organization.

11. Rezone all property now zoned D/C-2-A to C-2-A.

12. Make conforming amendments as follows:

A. Delete from Paragraph 3101.310 the words "pursuant to the provisions of Article 46, Section 4606."

B. Renumber existing Paragraph 3105.410 to 3105.46.

C. Amend the table of special exceptions in Sub-section 8207.2 for "community based residential facility" to change "3105.410" to 3105.46".

D. Amend the table of special exceptions in Sub-section 8207.2 to delete the following:

"Chancery; SP; 4101.44, 4603, 4604".

"Chancery, expansion; Any R; 3101.313, 4603, 4604".

E. In the table of special exceptions in Sub-section 8207.2, change "international agency" to "international organization" and delete "4603, 4604" from that line.

F. In Paragraph 4101.44 change "international agency" to "international organization."

G. In Paragraph 6101.31 change "international agencies" to "international organization."

H. Renumber existing paragraph 6101.38 to 6101.34.

I. Provide parking requirements for chanceries by adding to the table in Sub-section 7202.1, under the general heading of "COMMERCIAL BUILDINGS" the following:

Chancery:

R-5-C..... one for each 1,200 square feet of gross floor area devoted to chancery use, or as determined by the Board of Zoning Adjustment.

R-5-D..... one for each 1,800 square feet of gross floor area devoted to chancery use, or as determined by the Board of Zoning Adjustment.

D..... one for each 800 square feet of gross floor area devoted to chancery use, or as determined by the Board of Zoning Adjustment.

SP, C, CM, M.. same as required for general offices.

The specific proposed amendments to the Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment are as follows:

I. ADD A NEW CHAPTER 6 AS FOLLOWS:

Chapter 6 Review of Applications for the Location, Replacement or Expansion of Chanceries

600 Scope of Rules

600.1 The rules of procedure in this chapter apply to all applications for the location, replacement or expansion of chanceries which are subject to disapproval by the Board pursuant to Section 206(b) of the Foreign Missions Act (Title II, Public Law 97-241, 96 Stat. 286, August 24, 1982). Such applications are made pursuant to the provisions of Article 46 of the Zoning Regulations.

601 Rulemaking Proceedings

601.1 These rules establish procedures for considering applications under the Foreign Missions Act and Article 46 as rulemaking proceedings.

601.2 No person shall have the standing of a party in a Chapter 6 proceeding.

602 Applicability of Other Chapters

602.1 The provisions of Chapter 1 shall be applicable to applications under Article 46, except that no person shall have the standing of a "party" in a proceeding under this chapter.

602.2 The provisions of Chapters 2, 3, 4 and 5 shall not be applicable to applications under Article 46, except as specifically incorporated herein.



603 Applications

- 603.1 The owner of property for which application is made may file an application with the Board as may be provided by the Board. An authorized agent may file an application on behalf of the owner. The application shall include a letter signed by the owner authorizing the agent to act on his behalf in the application. The Board may at any time require additional evidence demonstrating the authority of the agent to act for the owner. At the time of filing the application, any fee established by the Mayor of the District of Columbia shall be paid to the District of Columbia Treasurer.
- 603.2 Each application for a chancery use shall be accompanied by a letter or other transmittal from the Department of State indicating that the Department has reviewed the application as required by Section 205 of the Foreign Missions Act and has approved the application for the purposes of filing and processing by the Board.
- 603.3 Each application, along with any appeal filed pursuant to Chapter 2 and any application filed pursuant to Chapter 3 of these rules, shall be numbered serially and docketed and may be placed upon the calendar of the Board by geographic areas by the Executive Director.
- 603.4 When the application is accepted, a copy of the application form shall be sent to the ANC within which the property is located. Notice of the filing of such an application shall be published in the D.C. Register.
- 603.5 A public hearing shall be held on each application.
- 603.6 No later than fourteen days before the date of the hearing, the applicant shall file with the Board any additional statements, information, briefs, reports, including reports or statements of expert and other witnesses, plans or other material that the applicant may wish to offer at the hearing. Any map, plan or other document or matter readily available to the general public need only be fully referenced and the location of the available source given by the applicant in lieu of filing a copy.
- 603.7 An application may be withdrawn at any time. Withdrawal does not authorize the removal of any document from the files of the Board. The application fee shall not be refunded upon withdrawal. A new application shall not be accepted for filing again for at least ninety days after withdrawal of the application without special leave of the Board.

603.8 An application dismissed by the Board for failure to comply with the procedural requirements of the Zoning Regulations or these Supplemental Rules of Practice and Procedure shall not be accepted for filing again for at least ninety days after the date of the order dismissing the application, without special leave of the Board.

604 Notice

604.1 Notice shall be given as set forth in Section 302, in the same manner as for an application under Chapter 3 of the Rules.

604.2 A notice of proposed rulemaking shall be published in the D.C. Register at least forty days in advance of the hearing.

605 Reports of the Mayor, Secretary of State, Historic Preservation Review Board and Fine Arts Commission

605.1 When an application is referred in advance of the public hearing to the Mayor, Secretary of State, and Historic Preservation Review Board or Fine Arts Commission for a report or recommendation, that report and recommendation shall be filed with the Board at least eight days prior to the date set for the hearing.

605.2 After consultation with the presiding officer, the Executive Director shall notify those agency representatives who should be present at the hearing.

605.3 In an application where a referral is made to a governmental department or office as required by the Zoning Regulations, if no report is received in the record and if the time period specified in Section 7608 of the Regulations has elapsed, then the Board may proceed to decide the application based on the record not including the report of the governmental department or office.

606 Hearing Procedures

606.1 The presiding officer shall have the authority to:

- (a) Regulate the course of the hearing;
- (b) Rule upon offers of testimony, statements and exhibits and receive relevant, non-repetitious testimony, statements and exhibits;
- (c) Assign exhibit numbers for all written documentary and other tangible matter offered for the record;

- (d) Dispose of procedural requests or similar matters, including motions to amend and to order hearings reopened;
- (e) Call, qualify and examine witnesses and to introduce into the record documentary or other material;
- (f) Request the persons appearing at the hearing to state their respective positions concerning any issue in the proceeding and theory in support thereof;
- (g) Adjourn a hearing and establish the date when the hearing will be continued;
- (h) Close a hearing;
- (i) Rule upon the qualifications of witnesses offered as experts;
- (j) Establish reasonable time limits for witnesses and fairly allocate time among the persons appearing at the hearing;
- (k) Exclude unduly repetitious or irrelevant testimony and permit a witness to adopt the prior testimony of another witness;
- (l) Take any other action authorized by these rules or necessary under these rules.

606.2 Nothing herein shall preclude members from questioning witnesses in hearings before the Board.

606.3 Any person may appear at a hearing in a Chapter 6 proceeding and may present evidence, testimony or argument that is relevant and not unduly repetitious within such time limits as the Board may determine.

606.4 The hearing will be reported under the supervision of the presiding officer, stenographically or by other means, by a reporter who may be designated from time to time by the Board or be a regular employee of the District of Columbia. The prepared transcript shall be the sole official transcript of the hearing. The transcript will be open for inspection at the office of the Zoning Secretariat. Copies of the transcript will be available from the Zoning Secretariat upon payment of the charges fixed therefore.

606.5 The order of procedure at the hearing shall be as follows:

- (a) Call to order and opening statement by the presiding officer.
- (b) Consideration of pending motions and procedural matters.
- (c) Applicant's case.
- (d) Reports or statements by the Secretary of State and the Mayor.
- (e) Reports or recommendations by other public agencies or governmental units or departments.
- (f) The ANC within which the property is located.
- (g) Persons in support of the application.
- (h) Persons in opposition to the application.

607 Record

607.1 Every written statement filed shall be part of the record of the hearings.

607.2 Exhibits may be offered in evidence at the hearing. Such exhibits may be in the form of photographs, models, graphs, or other materials. Any exhibit which exceeds a size suitable for inclusion in the record shall be reduced or folded to a size not to exceed legal size of 8 by 14 inches. No material shall be submitted for the record which exceeds legal size or cannot be folded to legal size. If models are used, photographs of the models, not exceeding legal size, must be supplied at the public hearing.

607.3 Oral testimony offered at the hearing shall be part of the record of the hearing.

607.4 The Foreign Missions Act, the Zoning Enabling Act, the Zoning Regulations including appendices, and the official zoning maps, and these Supplemental Rules of Practice shall be a part of the record of every proceeding before the Board.

608 Closing the Record

608.1 The record shall be closed following the public hearing, except that the record may be kept open for a stated period for the receipt of specific exhibits, information, or legal briefs, as may be directed by the presiding officer.

608.2 Any material received by the Board after the close of the record which bears upon the substance of the application shall be returned by the Executive Director and not received into the files of the Board.

608.3 Prior to the filing of a final decision or order, the Board may, on its own motion, reopen the record and require further hearing on designated issues before the Board. Notice of a further hearing, along with a designation of issues, shall be forwarded to any person who appeared and participated in the earlier hearings at least ten days prior to the date set for the further hearing.

609 Final Decision and Final Date.

609.1 The concurring vote of not less than a majority of the members of the Board shall be necessary for any decision or order.

609.2 Formal notice of a decision or order shall be given to the applicant by registered or certified mail, return receipt requested.

609.3 A copy of the decision or order shall be served on an ANC which submitted a written report in accordance with Section 108 of these Rules.

609.4 A copy of the decision shall be published in the D.C. Register as a notice of final rulemaking.

609.5 For the purposes of these Rules, a decision of the Board is final upon publication in the D.C. Register. The decision is effective ten days after having become final, as specified in Sub-section 8204.3 of the Zoning Regulations.

609.6 Approval of an application shall include approval of the plans included with the application for the construction of a building or structure or addition thereto or the renovation or alteration of an existing building or structure, unless the Board orders otherwise. An applicant shall be required to carry out the construction, renovation or alteration only in accordance with the plans approved by the Board, unless the Board orders otherwise.

II. PROPOSED CONFORMING AMENDMENTS TO THE RULES:

- A. Amend subsection 101.1 by inserting between the first and second sentences the following new sentence:

These rules are also intended to implement the Foreign Missions Act (Title II, Public Law 97-241, 96 Stat. 286, August 24, 1982) and shall apply to all applications governed by that Act.

- B. Sub-sections 100.7(b) and 300.1 are amended by deleting the phrase "Sections 4603 and 4604."

These amendments to the Zoning Regulations and Maps and the Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment shall remain in effect for 120 days from April 11, 1983, that is until August 9, 1983, or until permanent amendments are adopted by the Zoning Commission and become effective in accordance with the Rules of Practice and Procedure before the Zoning Commission, whichever comes first.

These amendments were adopted by the Zoning Commission at the public hearing held on April 11, 1983, by a vote of 3-0 (Commissioners George M. White, John G. Parsons and Lindsley Williams to adopt, Commissioner Maybelle T. Bennett abstaining, Commissioner Walter B. Lewis not present, not voting).

Attested by:   
Steven E. Sher  
Executive Director

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